LIBRARY
SUPREME COURT, U. S.

Office Supreme Court, U.S.
FILED
APR 17 1964
JOHN F. DAVIS, CLERK

# No. 959.

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963.

BUILDERS' ASSOCIATION OF KANSAS CITY,
*Petitioner,*

vs.

GREATER KANSAS CITY LABORERS DISTRICT COUNCIL OF THE INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA OF GREATER KANSAS CITY AND VICINITY,
*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

## PETITIONER'S REPLY BRIEF.

HARRY L. BROWNE,
HOWARD F. SACHS,
1000 Power & Light Building,
Kansas City, Missouri, 64105
*Counsel for Petitioner.*

SPENCER, FANE, BRITT & BROWNE,
Kansas City, Missouri,
STANFORD C. MADDEN,
906 Grand Avenue,
Kansas City, Missouri,
*Of Counsel*

E. L. MENDENHALL, INC., 1108 Oak Street, Kansas City, Mo. 64106, HArrison 1-3030

# No. 959.

IN THE

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1963.

BUILDERS' ASSOCIATION OF KANSAS CITY,
*Petitioner,*

vs.

GREATER KANSAS CITY LABORERS DISTRICT COUNCIL OF THE INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABORERS UNION OF AMERICA OF GREATER KANSAS CITY AND VICINITY,
*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

## PETITIONER'S REPLY BRIEF.

Respondent's brief opposing certiorari seeks to argue the merits. The weakness of respondent's position is shown by its attempt to rely on *Wiley & Sons* v. *Livingston*, ..... U.S. ..... (March 30, 1964), which has no relationship with the case at bar, except that it is a labor arbitration case.

Respondent asserts "there is no real conflict in the law," but cites a Fifth Circuit decision showing the conflict

is growing and vital. In *Mailers Union* v. *Newspapers, Inc.*, ..... F.2d ..... 55 LRRM 2693 (text attached), the Court of Appeals for the Fifth Circuit squarely contradicted the opinion below, with respect to the present status of the rule in the *Pressmen's* case (*Boston Printing Pressmen's Union* v. *Potter Press*, D.C., Mass., 141 F. Supp. 553 (1956), affirmed 241 F.2d 787 (1957), cert. denied, 355 U.S. 817). If the *Pressmen's* case is still good law, as the Fifth Circuit believes, the Courts below would have ruled the present case in favor of petitioner (A 12, A 20-1). If the *Pressmen's* rule is bad law, the union was improperly denied relief in the current *Mailers Union* case.

It is respectfully submitted that the conflict over the *Pressmen's* rule should be promptly resolved.

Respectfully submitted,

HARRY L. BROWNE,
HOWARD F. SACHS,
1000 Power & Light Building,
Kansas City, Missouri, 64105
*Counsel for Petitioner.*

SPENCER, FANE, BRITT & BROWNE,
Kansas City, Missouri,
STANFORD C. MADDEN,
906 Grand Avenue,
Kansas City, Missouri,
*Of Counsel.*

April, 1964.

## APPENDIX.

**Mailers Union v. Newspapers, Inc., United States Court of Appeals, Fifth Circuit (New Orleans).**

AUSTIN MAILERS UNION No. 136 v. NEWSPAPERS, INC., No. 20702. March 13, 1964.

HUTCHESON, Circuit Judge.—The material facts of this case are not in dispute and are succinctly set forth by the District Judge in his findings of fact.

Appellant's points of error correctly reflect the two principal issues here involved: (1) whether Sec. 301 of the Labor-Management Relations Act of 1947, 29 U.S.C.A. Sec. 185(a) empowers the federal courts to compel arbitration pursuant to a contract between an employer and a labor organization, as to future contractual provisions; and (2) whether the contract here involved was still in effect when the appellant sought to enforce the arbitration provisions.

In his findings of fact and conclusions of law,[1] the district judge answered these two issues in the negative. Based thereon, he then entered his order and judgment granting appellee summary judgment.

We are of the opinion that the findings of fact are not shown to be clearly erroneous and that on the basis of these facts and the controlling decisions, his conclusions of law were correctly drawn. In support of his opinion, the district judge relied on Boston Printing Pressman's Union v. Potter Press, 141 F. Supp. 553, 38 LRRM 2211, affirmed

1. Austin Mailers Union No. 136 v. Newspapers, Inc., F. Supp.

241 F.2d 787, 39 LRRM 2524, cert. denied 355 U.S. 817, 40 LRRM 2680.

Here appellant vigorously attacks the Potter Press decision as incorrect and the decision appealed from here as wrong. We cannot agree with this view. On the contrary, we are of the opinion that the Potter Press case was correctly decided and that on the findings and conclusions of the district judge, which we approve, the judgment here appealed from must be affirmed.

Affirmed.